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11 PEGGY BELCHER-DIXON

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 CITY AND COUNTY OF SAN FRANCISCO

14 _____
15 PEGGY BELCHER-DIXON, }
16 Plaintiff, }
17 vs. }
18 RITA SAENZ, in her capacity as Director of }
The California Department of Social }
19 Services; and CALIFORNIA }
DEPARTMENT OF SOCIAL SERVICES, }
20 Defendants. }
21 _____

No.

FILED BY FAX

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

22
23 INTRODUCTION

24 1. This action challenges the failure of the California Department of Social
25 Services (CDSS) and its director, Rita Saenz, to adequately regulate and monitor county
26 child welfare services and county run adoption agencies to ensure that adoptions are
27 processed in a timely manner and that children in the foster care system whose parental
28 rights have been terminated achieve permanence expeditiously. As a result of the failure of

1 CDSS and its director, many foster children experience long delays before they are adopted,
2 and many never have legally permanent homes.

3 2. State and federal law require the California Department of Social Services to
4 administer a child welfare services program that completes all steps necessary to finalize
5 the adoptions of foster children in a timely manner and provides services consistent with the
6 child's case plan goal of adoption. The Plaintiff, Peggy Belcher-Dixon, seeks declaratory
7 and injunctive relief finding that the actions of the California Department of Social Services
8 and its director, Rita Saenz, violate these laws and the due process rights of foster children
9 guaranteed by state and federal constitutions, and ordering them to comply with the law.

10 3. As a result of Defendants' dereliction of their duties under the law,
11 thousands of foster children have been subjected to unreasonable delays in completing their
12 adoptions. This delay and the resulting impermanence create severe emotional distress and
13 psychological harm to children and deprive children of the economic and other benefits that
14 flow from the parent-child relationship. Unless this court orders Defendants to perform
15 their legal duties, innocent children will continue to suffer irreparable harm and the State of
16 California is at risk of losing substantial federal funding.

17 PARTIES

18 4. PEGGY BELCHER-DIXON is a citizen and taxpayer in the State of
19 California. She has been a social worker for over 30 years and is herself an adoptee and, so,
20 is familiar with the importance of legal permanency to children.

21 5. Defendant CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
22 ("CDSS") is required to establish and support a public system of state-wide child welfare
23 services pursuant to Welfare & Institutions Code §§ 16500, *et seq.*; to supervise the
24 administration of state public social services, including child welfare services; and to secure
25 full compliance with applicable provisions of state and federal law. Welfare & Institutions
26 Code §§ 10600, *et seq.* CDSS also licenses adoption agencies including county run
27 adoption agencies. Health & Safety Code §§ 1500, *et seq.*, Welfare & Institutions Code §
28 16100.

1 10. Defendant CDSS is the single state agency responsible for California's
2 compliance with federal child welfare requirements pursuant to 42 U.S.C. §§ 622(a)(1) &
3 671(a)(2). CDSS is responsible for monitoring and conducting periodic evaluations of
4 child welfare activities funded with federal dollars and for arranging periodic audits
5 pursuant to 42 U.S.C. §§671(a)(7) &(13). CDSS is also responsible for establishing
6 standards and regulations for the operation of the state child welfare services program, for
7 certifying county child welfare services plans, and for licensing county adoption agencies.
8 Welfare and Institutions Code §§16502 & 16100, *et seq.* In order to protect children and
9 effectively administer and evaluate the child welfare services and foster care programs in
10 California, Defendant CDSS was required to implement a statewide Child Welfare Services
11 Case Management System no later than July 1, 1993. Welfare and Institutions Code
12 §16501.5.

13 11. CDSS must ensure that California counties operate child welfare services in
14 accordance with state and federal law and state child welfare regulations. 42 U.S.C. §
15 671(a)(3), Welfare and Institutions Code §§ 16501(c) & 16502. In addition, any county
16 may apply for a license to operate a county adoption agency. These county adoption
17 agencies must operate in accordance with state law and regulations; the administrative costs
18 for these agencies are borne by the State. Welfare and Institutions Code §§16100 & 16101-
19 16106.

20 12. State law prohibits any individual or entity from placing a child for adoption
21 unless and until CDSS issues a valid license. 22 California Code of Regulations §§ 89001.
22 Licenses may be granted only after CDSS reviews and approves the plan of operation and
23 finds it in compliance with applicable laws and standards, and CDSS has the authority and
24 responsibility to terminate the license of any agency found to be in violation of those laws
25 or standards. 22 California Code of Regulations §§ 89037 & 89043.

26 13. Although state and federal law require speedy reunification of families when
27 it can be safely accomplished, some children cannot be returned home. For these children,
28 the policy of the State is to locate or develop permanent homes and families. Welfare and

1 Institutions Code §16000 & 16500.1(a). When a child cannot return home, state and
2 federal law require an alternative permanency plan to be made and finalized in a timely
3 manner. 42 U.S.C. § 671(a)(15)(C), 45 C.F.R § 1356.21(b), Welfare and Institutions Code
4 §§16500.1(a), 16501.1(b), & 16500.8.

5 14. Although the parent-child relationship is protected by the state and federal
6 constitutions, state law authorizes termination of parental rights in certain cases when
7 parents are unfit in order to provide a child with an alternative permanent home. Welfare
8 and Institutions Code §366.26(a). A plan to identify, recruit, process, and approve a
9 qualified family for adoption of the child must be filed with the court at the time the
10 recommendation to terminate parental rights is submitted. Welfare and Institutions Code
11 §16508.1.

12 15. When the permanent plan for a child is adoption, the child is entitled to
13 permanent placement services designed to provide an alternative permanent family
14 structure; these services are provided pursuant to a case plan that documents the steps to be
15 taken to place the child with an adoptive family and to finalize the adoption. Welfare &
16 Institutions Code §§ 16501(i), 16501.2 (f) (13), 16,508; California Department of Social
17 Services Manual of Policies and Procedures (MPP) 31-301.11.

18 FACTUAL ALLEGATIONS

19 16. Contrary to the requirements of federal and state law, CDSS has failed to
20 develop and implement a system to ensure that foster children who are referred for adoption
21 achieve legal permanence in a timely manner. It has also failed to develop and implement
22 procedures to maintain consistency among the counties in processing permanency plans and
23 adoptions. As a result, thousands of children placed for adoption remain in foster care, and
24 children experience vastly different waiting times based on their county of residence.

25 17. An audit released by the United States Department of Health and Human
26 Services (HHS) on January 10, 2003, found, *inter alia*, that many foster children in
27 California experience unnecessary delays in achieving the permanency goal of adoption.

28

1 This audit concluded that California did not achieve substantial conformity with federal
2 permanency outcome measures.

3 18. According to recent data, in Los Angeles County alone, thousands of
4 children who cannot return home are waiting for adoption. In 2002, 1475 to 1763 children
5 each month were awaiting adoption after adoption placement papers had been signed and
6 an additional 1605- 2106 were free for adoption with no adoption placement papers signed.

7 19. Many children wait months or years for their case to be processed. In 2002,
8 Los Angeles County estimated that it took an average of 23.2 months - nearly two years -
9 for a child to be adopted after parental rights had been terminated.

10 20. An operational review conducted by Los Angeles County's Auditor-
11 Controller and released November 25, 2002, reviewed six major milestones in the adoption
12 process and found that these milestones, which should have been completed within 12
13 months, took an average of 45 months. For example, it took an average of 13 months to
14 request an adoption assessment, 1.9 months (56 days) to transfer the case from the regular
15 case worker to the adoptions unit, 3.5 months (81 days) to obtain state acknowledgement of
16 termination of parental rights from CDSS, 22 days to request a home study, and 20 months
17 to complete a home study. Even after parental rights are terminated, the home study is
18 complete, and the child is placed in the adoptive home, it takes an average of 5.8 months to
19 finalize the adoption.

20 21. The average time to process an adoption varies significantly among the
21 counties. For example, from 2000 through the first quarter of 2002, the mean processing
22 time to finalization for children free for adoption was 6 months in Riverside County, 16
23 months in San Diego, and 19 months in Los Angeles.

24 22. CDSS has not established time frames for completion of any of the elements
25 of the adoption, does not monitor county performance in this regard, and does not impose
26 any consequences if counties delay adoption for months or years. CDSS has neither
27 monitored the counties' performance in these areas nor required the counties to comply with
28 the law. For example, CDSS has not developed or enforced timelines for completion of the

1 home study, which is required before a child can be officially placed for adoption with a
2 family or for obtaining CDSS acknowledgement of a termination of parental rights order,
3 even though no efforts to achieve legal permanence for the child are made during this time.
4 CDSS has also failed to establish a process by which the child or the prospective adoptive
5 parents can challenge an unreasonable delay or refusal to approve or act on a home study.
6 As a result, counties are free to delay this process for months, as Los Angeles County does,
7 or for years. There is no consequence to the county for failing to make reasonable efforts to
8 ensure that children are adopted.

9 23. Although CDSS is aware of these problems, it has taken no action to correct
10 them. For example, CDSS conducted a study of Los Angeles adoptions for fiscal year
11 1998-99 and found, among other things, placement delays in 84% of the cases because the
12 home study was not complete, significant waits between placement and finalization, and
13 troubling child safety issues. The county was also unable to locate the files for 35 of the
14 200 cases requested for the study. Nevertheless, CDSS has not followed up to address
15 these issues. CDSS itself reported to HHS that barriers to achieving adoption in a timely
16 manner exist.

17 24. The actions and inactions of Defendants increase impermanence and cause
18 emotional and psychological harm to children in foster care. Delays in the adoption process
19 have real consequences for children and can result in the deprivation of a permanent home.
20 Termination of parental rights severs the legal ties a child has to his or her family. Until the
21 child is adopted, he or she is a "legal orphan" without parents. Terminating parental rights
22 and delaying adoption not only deprives the child of the right to a family but also of
23 concrete benefits such as inheritance and property rights that flow from the parent child
24 relationship.

25 25. Delay can also make adoption less likely to occur at all. During the time it
26 takes to complete this process, events in the family's life may discourage parents from
27 adopting. Delay can also affect the child. It is well accepted in the child welfare field that
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1 the anxiety experienced by a child who lacks permanence may adversely affect his or her
2 behavior. These behavioral problems can result in a disruption of the child's placement.

3 26. Delays also prolong state involvement in the lives of adoptive parents and
4 their children. Prior to adoption, adoptive parents are limited in their ability to make
5 educational, medical, and other important decisions for their adoptive child and may be
6 required to delay decisions, such as moving from their current home. Delays in finalization
7 also prolong juvenile court jurisdiction, further extending state intervention into the family's
8 life and adding additional unnecessary costs.

9 27. State standards and oversight would reduce these delays. For example, the
10 Los Angeles Auditor-Controller found that adoptions workers did complete casework
11 responsibilities, such as visitation that are regulated by state law and on which counties are
12 audited, while neglecting those tasks where the time and manner of completion was
13 discretionary.

14 FIRST CAUSE OF ACTION

15 (Failure To Finalize Permanent Placements In A Timely Manner--

16 Violation Of State And Federal Statutes)

17 28. Defendants' failure to ensure that all steps necessary to finalize the
18 permanent placement of children are completed in a timely manner and that services are
19 provided consistent with the child's case plan is a violation of 42 U.S.C. § 671(a)(15)(C),
20 45 C.F.R. § 1356.21, Welfare and Institutions Code §16501.1(b); and MPPP 31-301.11.

21 29. As a result of the actions and inactions of the Defendants, children are
22 denied a timely permanent placement and suffer ongoing, irreparable harm.

23 30. As a result of the actions and inactions of the Defendants, California is at
24 risk of losing substantial federal funding if found to violate federal law.

25 31. This violation constitutes a waste of public funds within the meaning of
26 Code of Civil Procedure §526a.

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1 FOURTH CAUSE OF ACTION

2 (Violation Of Procedural Due Process And
3 Federal Fair Hearing Requirement)

4 39. Defendants' failure to establish timelines for milestones in the permanency
5 process including, but not limited to, completion of a home study, and a system for
6 appealing the delay of a home study before a neutral fact finder, violates 42 USC §
7 671(a)(12) and the right to due process of law under the 14th Amendment of the United
8 States Constitution and Article I, Section 7 of the California Constitution.

9 40. These failures constitute a waste of public funds within the meaning of Code
10 of Civil Procedure § 526a.

11 PRAYER FOR RELIEF

12 Plaintiff requests that this Court:


- 13 1. Declare that the practices of Defendants violate state and federal law and
14 deprive foster children of statutory and constitutional rights.
- 15 2. Issue an injunction requiring Defendants to:
- 16 a. promulgate and implement policies and procedures to ensure that all
17 steps necessary for adoption are completed in a timely manner and
18 that all permanent placement services are rendered in a manner
19 consistent with the child's case plan goal when that goal is adoption,
20 and
- 21 b. promulgate and implement notice and hearing procedures by which
22 applicants have a right to a timely completion of permanency
23 milestones, including but not limited to, a decision on a homestudy
24 and a right to appeal any delay in completing those milestones.
- 25 3. Award Plaintiff reasonable attorneys' fees and costs.
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1 4. Grant such other and further relief as the Court finds just and proper.

2 Dated: February 11, 2003.

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